

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 662 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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HARSHADKUMAR DHIRAJLAL AUNDKAT

Versus

ASSISTANT COLLECTOR

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MR MANOJ N POPAT for Petitioner  
Mr.U.A.Trivedi, learned A.G.P.for respondents

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 25/02/99

ORAL JUDGEMENT

1. Heard learned counsel.

2. The petitioner herein was allotted a piece of land admeasuring 1277.40 sq.mtrs. out of S.No.707 situated at village Dhrol by the order dt.9.7.82 for constructing a Factory premises for the purposes of manufacturing soap and other products. The petitioner failed to make use of this land allotted to him and did not make any construction within the stipulated period.

The Assistant Collector, Jamnagar by his order dt.9.8.89 directed to take the possession of the said land from the petitioner on account of the breach of the conditions committed by the petitioner. The petitioner preferred an Appeal against the said order before the Collector, Jamnagar and that Appeal was rejected. He then preferred Revision Application before the Gujarat Revenue Tribunal, which was also rejected on 12.10.95. The petitioner in this very cause preferred Special Civil Application No.1245/96 stating therein the reasons for his inability to raise the construction in question. The Court while issuing Rule on 7.1.97 also heard the matter and observed that the reasons, which were given by the petitioner for not making use of the said land, required consideration and that the same had not been put forth before the Collector, Jamnagar and, therefore, the same could not be considered. In these circumstances, the Court granted an opportunity to the petitioner to approach the Collector, Jamnagar within a period of 2 weeks from the date of the order i.e. 7.1.97 by making a detailed representation as to why he was not in a position to make the construction and why action proposed against him should not be taken against him. On his making such a representation the Collector, Jamnagar was to consider and decide the same according to the Rules and Regulations within a period of 4 weeks from the date of the representation. The Court also ordered that the Collector shall serve the order on the petitioner and that the petitioner shall not seek any adjournment before the Collector and should make the representation within 2 weeks from today i.e. the date of the order - 7.1.97 without failure and the Collector should decide the same after affording a reasonable opportunity of being heard to the petitioner. With the directions, as aforesaid, the Special Civil Application No.1245/96 was disposed of.

3. Instead of making the representation within 2 weeks without failure, as ordered by the Court i.e. by 21.1.97 (2 weeks from 7.1.97) the petitioner submitted the application/representation dt.11.2.97, which was received by the Collector on 3.3.97. The Collector, Jamnagar has noted in the impugned order dt.10.4.97 that on the basis of the order dt.7.1.97 passed by the High Court in Special Civil Application No.1245/96, the petitioner had made the application/representation dt.11.2.97 on 3.3.97, but no details had been given in this application as to why the industry was not started. According to the Collector, Jamnagar, the application / representation was also required to be made by 22.1.97 but the same was given on 3.3.97. It appears that the petitioner then moved one more application on 13.6.97

before the Collector, Jamnagar and this application dt.13.6.97 was replied by the Collector, Jamnagar vide its communication dt.3.7.97 stating therein that the petitioner had not given any details and only an application was given on 3.3.97 for hearing.

4. The petitioner did not take any step after the aforesaid order dt.10.4.97 and the communication dt.3.7.97 and filed the present Special Civil Application on 27.1.99 i.e. after about one year and nine months from 10.4.97 and after about one and half years from the communication dt.3.7.97 for which no explanation worth the name has been given in the present petition except saying in Para 9 that he had sent letters dt.21.7.97 and 31.7.97 and that he had not received any reply to these letters. When the matter came up before the Court on 29.1.99 the Court granted time to the petitioner to place on record a copy of the representation, which was submitted by the petitioner to the Collector alongwith his application dt.11.2.97 as mentioned in the document Annexure 'D' i.e. the order dt.10.4.97. The petitioner did not even care to place this copy of the representation alongwith the application dt.11.2.97 on record despite the opportunity granted by the Court on 29.1.99. Thereafter, when the matter came up before the Court on 8.2.99, it is the submission of the learned counsel for the petitioner that he had pointed out before the Court that the certified copy of the order dt.7.1.97 was made available to him on 21.1.97 and it has also been pointed out by Mr. Manoj Popat on behalf of the petitioner that he had invited the attention of the Court to the copy of the letter dt.31.7.97, about which the reference has been made in para 9 of the petition. The learned counsel also submits that on 8.2.99 he had also made an oral statement before the Court that alongwith the application, which was filed before the Collector after this Court's order dt.7.1.97, he had enclosed a copy of the earlier Special Civil Application. The learned counsel submits that on the basis of oral submissions made on behalf of the petitioner, the Court issued notice on 8.2.99 although he did not avail the opportunity of placing the representation on record which is said to have been made by the petitioner before the Collector, Jamnagar with his application dt.11.2.97. The copy of this representation and the application dt.11.2.97 has not been placed on the record even till today. It is clear from the facts of the present case that the petitioner kept sitting tight over the land allotted to him in the year 1982 and did not make use of the same resulting into the blocking of the industrial development. Such lands are allotted for increase in the

industrial production and if the same are not made use of by the persons, in whose names the lands are allotted, the lands remain idle and the industrial production suffer. In any case, the notice was given to the petitioner and the possession was sought to be taken back on the basis of the order dt.9.8.89 passed by the Assistant Collector for the breach of the conditions committed by the petitioner and against that order dt.9.8.89 the petitioner filed Appeal before the Collector and also before the Gujarat REvenue Tribunal. When the petitioner filed the Special Civil Application No.1245/96 earlier the Court granted an opportunity to make a detailed representation within 2 weeks without failure before the Collector, but the petitioner did not avail this opportunity within the time granted by the Court and not only that even while submitting the so called representation alongwith the application dt.11.2.97 he did not disclose the details as to why the industry was not started and thus the whole purpose for which the opportunity was granted by the Court to the petitioner while passing the order dt.7.1.97 in Special Civil Application No.1245/96 was defeated. The Collector, Jamnagar has rejected the petitioner's case not only because he failed to move the Collector, Jamnagar within 2 weeks but also because the petitioner did not give any details as to why the industry was not started, as has been clearly mentioned in the order dt.10.4.97. Even if the petitioner's explanation that the certified copy was received by him on 21.1.97 is accepted, the application dt.11.2.97 was still beyond the period of 2 weeks granted by the Court even from 21.1.97 and in fact date 11.2.97 is the date marked on that application. It was actually received by the Collector's office on 3.3.97 i.e. after a period of one month and ten days even from the date on which the certified copy of made available to the petitioner. These facts eloquently speak about the petitioner's own conduct in not taking care of the directions given by this Court in the order dt.7.1.97 and not acting according to the same, not only in respect of the time limit but also in not giving the details as to why the industry had not been started, which was precisely the purpose behind granting the opportunity to the petitioner to make representation.

5. Even the present Special Civil Application was filed on 27.1.99 when the order had been passed by the Collector on 10.4.97 on his application dt.11.2.97, which was received by the Collector on 3.3.97 and the further application of 13.6.97 was also rejected by the Collector, Jamnagar on 3.7.97. The petitioner approached this Court in the present matter after a period of one

year and nine months from 10.4.97 and after about one and half years from 3.7.97 and for this delay also no reasonable explanation has been given. A bald statement has been made that he had moved the applications dt.21.7.97 and 31.7.97 and did not receive the reply. One fails to understand that when the rejection of his application dt.11.2.97 had been conveyed to him vide order dt.10.4.97 and his further application dt.13.6.97 had also been rejected on 3.7.97, where was the justification to make the repeated memorials neither provided for in the Rules nor otherwise granted and thus there is no justification for the petitioner to wait for such a long period after 1997 and move the present Special Civil Application in January 1999, as aforesaid. Whereas the notice had been issued by the Court, the learned A.G.P. has appeared in response to this notice and Mr. Trivedi, learned A.G.P. has pointed out that the possession of the land in question had also been taken from the petitioner on 24.7.98 by the respondents and the land now vests in the Government. It is strange that even when the possession was taken from the petitioner on 24.7.98 still he did not approach the Court in time and filed the present petition in January, 1999.

6. This petition also requires to be rejected inasmuch as the petitioner has made a statement, which is simply a tissue of lie when he says that as on date the land in question is in possession of the petitioner while the learned A.G.P. has made a categorical statement before this Court, as above, that the possession had been taken from the petitioner on 24.7.98. Thus, the petitioner has deliberately filed a false affidavit before this Court saying so.

7. A vague statement has been made in para 10 of the petition that similarly situated persons like the petitioner have already been given the land and were also regularised. Such a bald and vague statement can hardly be gone into. No details even of a single party had been given and merely by saying as if it is sufficient to make a bald statement that similarly situated persons have been given land and their cases have been regularised, such vague and bald plea only deserves to be rejected as there is no material to consider the same.

8. In the opinion of this Court, enough indulgence has been granted to the petitioner. The petitioner has not cared to comply the directions issued by the Court in his own favour and has failed to adhere either to the time schedule or for the purpose of submitting the details. There is no averment in the body of the

petition that alongwith this application dt.11.2.97 the petitioner had enclosed a copy of the earlier Special Civil Application, nor it appears to be correct as there is no mention about the copy of the Special Civil Application being enclosed with the Application as there is no mention to this effect either in the order dt.10.4.97 or in the communication dt.3.7.97. There is total absence of any contemporaneous material in support of this bald statement made before the Court that a copy of the Special Civil Application had been filed alongwith the application dt.11.2.97 and to this Court it appears that it is really an after thought. In case the petitioner has failed to avail the opportunity granted by the Court in letter and spirit with regard to time schedule as well as on the question of giving details as to why the industry was not started in time, the petitioner has to thank himself. I find that in the facts and circumstances of this case in its entirety it would amount to a plain and simple abuse of the process of the Court if this Special Civil Application is entertained and the petitioner is allowed to litigate repeatedly against the cause on wholly unjustified grounds and for reasons which are jejune and not at all relevant. I do not find any merit in this Special Civil Application. The same is hereby dismissed. Notice is hereby discharged. No order as to costs.